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OFFICE OF PETITIONS

In re Patent No. 7,560,265 :
Kim et al. :
Issue Date: July 14, 2009 :
Application No. 10/578,943 : DECISION ON REQUEST FOR
Filed: November 9, 2006 : RECONSIDERATION OF
Attorney Docket No. UTCA-13144 : PATENT TERM ADJUSTMENT
Title: Compositions For :
Regulation Of Tumor Necrosis :
Factor-Alpha :

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §1.705(d)", filed September 14, 2009. Patentees request the final Patent Term Adjustment calculation to increase from 0 days to 64 days.

The application for reconsideration of patent term adjustment is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated on the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of **sixty-one (61) days**.

The above-identified application matured into U.S. Patent No. 7,560,265 on July 14, 2009. The patent issued with a patent term adjustment of 0 days. This request for reconsideration of patent term adjustment was timely filed within two months of the issue date of the patent. See, 37 CFR 1.705(d).

Patentees request recalculation of the patent term adjustment based on Japan Tobacco, Inc. Patentees assert they are entitled to a patent term adjustment of 64 days for over three year delay pursuant to 37 CFR 1.702(b). Thus, patentees request that the determination of patent term adjustment be increased to a total of sixty-four (64) days (the sum of the period of three-year

delay (64 days) and the period of examination delay (0 days) less 2 days of applicant delay). The 2 days of applicants' delay is not disputed.

At the time of the mailing of the Notice of Allowance, there was no dispute as to the accuracy of this determination because as of the mailing of the notice of allowance, the undisputed periods of reduction for applicant delay exceeded the period of adjustment for Office delay. As the Office does not set forth negative balances of patent term adjustment, the initial determinations of patent term adjustment of 0 days were properly not disputed.

As stated in 37 CFR 1.703(b), the period of adjustment under § 1.702(b) is the number of days in the period beginning on the day after the date that is three years after the date on which the application was filed under 35 U.S.C. 111(a) or the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application and ending on the date a patent was issued, but not including the sum of the periods under § 1.703(b)(1)-(4). While the date of completion of all 35 U.S.C. 371 requirements, November 9, 2006, is the date used in calculating examination delay under 37 CFR 1.703(a), the date the national stage commenced under 35 U.S.C. 371(b), Friday, May 12, 2006, is used in determining the Three Year Delay under 37 CFR 1.703(b).

Pursuant to 37 CFR 1.703(b)(1), the period of adjustment under 37 CFR 1.702(b) should be 63 days, counting the number of days beginning on the day after the date that is three years after the date on which the national stage commenced under 35 U.S.C. 371(b), May 13, 2009, and ending on the date the patent issued, July 14, 2009.¹

In view thereof, the patent term adjustment indicated on the patent should be sixty-one (61) **days** (63 - 2) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

¹ It is noted that patentees' calculations use May 8, 2006 as the date the national stage commenced. However the Office calculates the date the national stage commenced 30 months from the priority date of November 12, 2003.

Patentees are given THIRTY (30) DAYS or ONE (1) MONTH, whichever is longer, from the mail date of this decision to respond to this decision. No extensions of time will be granted under § 1.136.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by sixty-one (61) days.

Telephone inquiries specific to this matter should be directed to Petitions Attorney Charlema Grant, at (571) 272-3215.

/Kery A. Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Deputy Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

DRAFT

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,560,265 B2

DATED : July 14, 2009

INVENTOR(S) : Kim et al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (0) days

Delete the phrase "by 0 days" and insert – by 61 days--